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8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 MARVIN TOLEDO, on behalf of himself and  
13 all others similarly situated, and the general  
public,

14 *Plaintiff,*

15 v.

16 DELTA AIR LINES, INC., a Delaware  
corporation; and DOES 1 through 50,  
17 inclusive,

18 *Defendants.*  
19  
20  
21  
22  
23  
24

Case No. 3:22-cv-00081-AMO

**CLASS AND REPRESENTATIVE ACTION**

**FIRST AMENDED COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Pay All Earned Vacation Time (Lab. Code § 227.3);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

**JURY TRIAL DEMANDED**

1 Plaintiff MARVIN TOLEDO (“Plaintiff”), on behalf of himself and all others similarly  
 2 situated, and the general public, complains and alleges as follows:

### 3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants DELTA AIR  
 5 LINES, INC., a Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to  
 6 as “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that  
 7 Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal  
 9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular  
 13 rate of pay;
- 14 (5) failed to pay them overtime wages at the correct rate;
- 15 (6) failed to pay them double time wages at the correct rate;
- 16 (7) failed to pay them overtime and/or double time wages and/or sick pay by failing to  
 17 include all applicable remuneration in calculating the regular rate of pay;
- 18 (8) failed to pay them at least minimum wage for all hours worked;
- 19 (9) failed to reimburse them for all necessary business expenses;
- 20 (10) failed to provide them with accurate written wage statements;
- 21 (11) failed to pay them all of their final wages following separation of employment; and
- 22 (12) failed to pay them for all earned vacation time following separation of employment;

23 Based on these alleged violations, Plaintiff now brings this class and representative action to  
 24 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of  
 25 himself and all others similarly situated, all other aggrieved employees, and the State of California.

### 26 **JURISDICTION AND VENUE**

27 2. Defendant removed this case to federal court asserting jurisdiction under 28 U.S.C.  
 28 Sections 1332, 1441, 1446 and 1453.

**PARTIES**

3. Plaintiff is and was, and at all relevant times mentioned herein, an individual residing in the State of California.

4. Plaintiff is informed and believes, and thereupon alleges, that Defendant DELTA AIR LINES, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing business in the State of California.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

6. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some or all of the other defendants, and, in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent, and ratification by such other defendants.

**CLASS ALLEGATIONS**

7. This action has been brought and may be maintained as a class action pursuant to Federal Rules of Civil Procedure 23, because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

8. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

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**Hourly Employee Class:** All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

**Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

**Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

**Wage Statement Penalties Sub-Class:** All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

**Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

**Vacation Time Sub-Class:** All **Hourly Employee Class** members who separated from their employment with Defendants during the **Relevant Time Period**.

**UCL Class:** All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

**Regular Rate Class:** All of Defendants' hourly, non-exempt employees who were not paid overtime wages for all overtime hours worked and/or premiums for meal and/or rest break violations and/or sick pay as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, commissions, afternoon shift premiums, night premiums, temporary duty override, shared rewards, incentive-All About Cust, award, pay card value, premium override, non-discretionary bonuses and/or other applicable remuneration.

**Expense Reimbursement Class:** All persons employed by Defendants in California who were not reimbursed for required personal cell phone expenses and personal protective equipment, including steel toed boots, safety vests, marshaling wands, knee pads, earmuffs, and/or gloves during the **Relevant Time Period**.

9. **Reservation of Rights:** Pursuant to Federal Rule of Civil Procedure 23, Plaintiff reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

10. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number exceeds the minimum required for numerosity under California law.

1           11.    **Commonality and Predominance:** Common questions of law and fact exist as to all  
 2 class members and predominate over any questions that affect only individual class members. These  
 3 common questions include, but are not limited to:

- 4           i.    Whether Defendants maintained a policy or practice of failing to provide employees  
 5               with their meal periods;
- 6           ii.   Whether Defendants maintained a policy or practice of failing to provide employees  
 7               with their rest periods;
- 8           iii.   Whether Defendants failed to pay premium wages to class members when they have  
 9               not been provided with required meal and/or rest periods;
- 10          iv.   Whether Defendants failed to pay minimum and/or overtime wages to class members  
 11               as a result of policies that fail to provide meal periods in accordance with California  
 12               law;
- 13          v.    Whether Defendants failed to pay minimum and/or overtime wages to class members  
 14               for all time worked;
- 15          vi.   Whether Defendants used payroll formulas that systematically fail to account for  
 16               non-discretionary bonuses and/or other applicable remuneration when calculating  
 17               regular rates of pay for class members;
- 18          vii.   Whether Defendants failed to pay overtime wages and/or sick pay to class members  
 19               as a result of incorrectly calculating their regular rates of pay;
- 20          viii.   Whether Defendants failed to pay premium wages to class members based on their  
 21               respective “regular rates of compensation” by not including commissions and/or  
 22               other applicable remuneration in calculating the rates at which those wages are paid;
- 23          ix.   Whether Defendants failed to reimburse class members for all necessary business  
 24               expenses incurred during the discharge of their duties;
- 25          x.    Whether Defendants failed to provide class members with accurate written wage  
 26               statements as a result of providing them with written wage statements with  
 27               inaccurate entries for, among other things, amounts of gross and net wages, and total  
 28               hours worked;

- xi. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
- xii. Whether Defendants applied policies or practices that result in an unlawful forfeiture of vested vacation pay;
- xiii. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;
- xiv. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

12. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

13. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to or otherwise conflict with the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

14. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

15. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to prosecute their common claims simultaneously and efficiently in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the

1 potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3 16. Plaintiff worked for Defendants as an hourly, non-exempt employee during the  
4 applicable statutory period.

5 **Security Check and Off-the-Clock**

6 17. Plaintiff and the putative class were required to go through a security check at the  
7 time of entering and leaving the premises on which they worked. The security check required  
8 Plaintiff and the putative class to first wait in a general purpose line to go through a security  
9 screening. Delta provided specific requirements for how those checks were to be conducted,  
10 including which clothing items were subject to search.

11 18. Plaintiff and the putative class were required to stand through long lines to be fully  
12 inspected and cleared to enter the premises. Getting through security took on average 35 minutes,  
13 but at times could be longer. All of this time was considered Plaintiff and the putative class' own  
14 personal time for which they were not compensated, although the security checks were done for the  
15 benefit of Defendants and as an everyday work requirement. Defendants exert control over the  
16 extent to which employees were subject to security checks as exemplified by their SkyPriority  
17 Access program which offers expedited security lines. Some of the security checks were manned  
18 and controlled by Delta employees, not by government or airport employees.

19 19. Plaintiff and the putative class were required to spend at least five to fifteen minutes  
20 each time they went through the security check—time that was not paid by Defendants.

21 20. Plaintiff and the putative class were required to go through the security check prior  
22 to clocking in at the beginning of each work shift and were required to clock out first at the end of  
23 each work shift prior to going through the security check.

24 21. Additionally, after getting through long security lines, Plaintiff and the putative  
25 class would walk to their designated wall machine for clocking in and/or clocking out, and there  
26 would be another line of employees which would take approximately five minutes to get through  
27 so that they could punch in and start their recorded hours for pay.

1           22. After going through security checks but before clocking in, Defendants required  
2 Plaintiff and the putative class to don personal protective equipment which typically took around ten  
3 minutes. Plaintiff and putative class members were not reimbursed for the off-the-clock work donning  
4 and doffing of personal protective equipment including safety vests, gloves and ear muffs, which are  
5 kept on the premises and which employees cannot take home.

6           23. Defendants had a time clock policy that results in underpayment of wages to Plaintiff  
7 and putative class members. Defendants' time clock policy pays putative class members based on  
8 their scheduled shift time, even if the putative class member clocks in six minutes early or late, or  
9 clock out six minutes early or late. However, the policy also provides that an employee who clocks  
10 in after the start time of the shift will be considered late (even within the six minute window) and that  
11 an employee who clocks out before the end time of the shift (even within the six minute window)  
12 may be considered to have left work early. Therefore, the effect of Defendants' policy is that the  
13 putative class members have to clock in so that the clock in time will be at or before the start of their  
14 shift, and clock out so that the clock out time will be at or after the end of their shift. And they do not  
15 get paid for the time pre and post shift that they spend waiting to clock in. Thus, Defendants' policy  
16 requires putative class members to work-off-the-clock.

17           24. Finally, Plaintiff and the putative class were constantly having to stay late and work  
18 "off-the-clock." Because people would leave but there would still be pressing work requirements,  
19 Plaintiff and the putative class were required to stay after their shift had ended and pick up other  
20 employees' duties so that Defendant could maintain their schedule. Plaintiff and putative class  
21 members were required to perform off-the-clock work at the end of shifts when planes arrive late at  
22 the end of their shift.

23           25. Based on the above, Defendants' security check practices and timeclock procedures  
24 have resulted in substantial amounts of time not recorded as hours worked therefore resulting in  
25 substantial amounts of wages not paid to Plaintiff and the putative class.

26           26. Defendants knew or should have known that Plaintiff and the putative class were  
27 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the  
28 putative class for these hours.



1           27. Defendants were aware of this practice and directed, permitted, or otherwise  
2 encouraged Plaintiff and the putative class to perform off-the-clock work.

3           28. As a result of Defendants' policies and practices, Plaintiff and the putative class were  
4 not paid for all hours worked.

5           **Missed, Shortened, and/or Interrupted Meal Periods and Policy of Deducting 30 Minutes**

6           29. During their employment with Defendants, Plaintiff and the putative class regularly  
7 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first  
8 five hours, and/or a second meal break after ten hours, as required by California law. Defendants  
9 had a policy of deducting thirty minutes from Plaintiff's and the putative class' paychecks,  
10 regardless of whether Plaintiff and the putative class received a meal period or not.

11           30. Plaintiffs and the putative class members were not provided with meal periods of at  
12 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not  
13 scheduling each meal period as part of each work shift; (2) chronically understaffing each work  
14 shift with not enough workers; (3) imposing so much work on each employee such that it made it  
15 unlikely that an employee would be able to take their breaks if they wanted to finish their work on  
16 time; and (4) a flawed formal written meal and rest period policy that did not encourage employees  
17 to take their meal periods. Defendants' have a defective meal break policy which provides that  
employees have waived the right to a meal break unless they affirmatively ask for one.

18           31. Plaintiff and the putative class were directed by their managers and supervisors to  
19 clock out for meal periods even though they continued to perform work with the full knowledge of  
20 their supervisors. Plaintiff and the putative class would be forced to clock out for lunch even  
21 though they did not actually go to lunch and continued working. Additionally, there were three  
22 security checks required when entering or leaving the work premises which would take  
23 approximately 35 minutes to get through, so it was impossible to leave the premises. Plaintiff and  
24 the putative class clocked out with a wall machine, and there was a line of employees looking to  
25 clock in and out at the same time. Therefore, their meal periods were regularly shortened because  
26 they were required to be timely clocked in to report to their stations. Additionally, if a flight  
27 arrived early or other work popped up suddenly, Plaintiff and the putative class were required by  
28 their managers and supervisors to attend to pressing tasks regardless of whether they were

1 supposedly taking a meal period or not.

2 32. Defendants' failed to provide compliant meal and rest breaks due to Defendants'  
3 requirement that Plaintiff and putative class members be at the gate within fifteen minutes of each  
4 arriving and departing aircraft. Due to the frequency of incoming planes, this meant that Plaintiff  
5 and putative class members would always have to be at the gate, even during their meal and rest  
6 breaks.

7 33. Defendants' failed to provide compliant meal and rest breaks due to Defendants'  
8 prohibiting Plaintiff and putative class members from going to the terminal during their breaks.

9 34. As a result of Defendants' policy, Plaintiffs and the putative class were regularly not  
10 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours  
11 worked due to complying with Defendants' productivity requirements that required Plaintiff and  
12 the putative class to work through their meal periods in order to complete their assignments on  
13 time.

#### 13 **Missed Rest Periods**

14 35. Plaintiff and the putative class were not provided with rest periods of at least ten  
15 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'  
16 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing  
17 each work shift with not enough workers; (3) imposing so much work on each employee such that  
18 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their  
19 work on time; and (4) a flawed formal written rest period policy that did not encourage employees  
20 to take their rest periods. Defendants have a defective rest break policy which fails to permit  
21 Plaintiff and putative class members to leave the premises during rest breaks

22 36. There were three security checks required when entering or leaving the work  
23 premises which would take approximately 35 minutes to get through, so it was impossible to leave  
24 the premises for rest breaks.

25 37. Plaintiff and the putative class were required to stay on the premises at all times. No  
26 set time was scheduled for rest breaks, and a majority of their shifts Plaintiff and the putative class  
27 were unable to take any rest breaks as they were required to continuously work through the  
28

1 duration of their shifts.

2 38. Defendants' failed to provide compliant meal and rest breaks due to Defendants'  
3 requirement that Plaintiff and putative class members be at the gate within fifteen minutes of each  
4 arriving and departing aircraft. Due to the frequency of incoming planes, this meant that Plaintiff  
5 and putative class members would always have to be at the gate, even during their meal and rest  
6 breaks.

7 39. Defendants' failed to provide compliant meal and rest breaks due to Defendants'  
8 prohibiting Plaintiff and putative class members from going to the terminal during their breaks.

9 40. As a result of Defendants' policy, Plaintiff and the putative class were regularly not  
10 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked  
11 due to complying with Defendants' productivity requirements that required Plaintiff and the  
12 putative class to work through their rest periods in order to complete their assignments on time.

### 13 **Regular Rate of Pay**

14 41. The regular rate of pay under California law includes all remuneration for  
15 employment paid, on behalf of the employer, to the employee. This requirement includes, but is  
16 not limited, to, commissions and non-discretionary bonuses.

17 42. During the applicable limitations period, Defendants violated the rights of Plaintiff  
18 and the putative class under the above-referenced Labor Code sections by failing to pay them meal  
19 and/or rest break premiums and/or overtime wages and/or sick pay for all overtime hours worked  
20 in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their  
21 regular rate of pay to include all applicable remuneration, including, but not limited to,  
22 commissions, afternoon shift premiums, night premiums, temporary duty override, shared rewards,  
23 incentive-All About Cust, award, pay card value, premium override, non-discretionary bonuses  
24 and/or other applicable remuneration.

### 25 **Expense Reimbursement**

26 43. Plaintiff and the putative class members were required to purchase personal  
27 protective equipment, including steel toed boots, safety vests, marshaling wands, knee pads,  
28 earmuffs, and gloves to perform their job duties.

44. Plaintiff and the putative class members were not fully reimbursed for business expenses incurred in purchasing these aspects of their uniform and their personal protective equipment.

45. In addition to the personal protective equipment, Plaintiff and the putative class members were required to use their personal cell phone for work purposes. Defendants required Plaintiff and the putative class members to use their personal cell phones to communicate with their supervisors, and they were required to respond to all work-related cell phone calls and text messages from Defendants. Defendants did not provide Plaintiff or the putative class members with company cell phones or alternative means of communication for these general work-related communications. Additionally, Defendants did not reimburse Plaintiff or the putative class members for a reasonable percentage of those phone expenses incurred.

46. Defendants failed to reimburse Plaintiff and the putative class for such necessary business expenses incurred by them.

## Wage Statements

47. Plaintiff and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code § 226.

48. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

49. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

50. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

51. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including

1 overtime and “off-the-clock” work were not included.

2 **Vacation Pay**

3 52. Vacation pay is considered a form of wages under California law. Vested vacation  
4 pay and other similar forms of paid time off earned based on labor performed are considered wages  
5 that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates  
6 required by law.

7 53. At all relevant times during the applicable limitations period, Defendants maintained  
8 a policy or practice that provided for the unlawful forfeiture of vested vacation pay.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

12 **(Plaintiff and Meal Period Sub-Class)**

13 54. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged  
14 herein.

15 55. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been  
16 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor  
17 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

18 56. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative  
19 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal  
20 periods of at least thirty minutes for each work period of five hours, and to provide them with two  
21 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

22 57. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers  
23 from requiring employees to work during required meal periods and require employers to pay non-  
24 exempt employees an hour of premium wages on each workday that the employee is not provided  
25 with the required meal period.

26 58. Compensation for missed meal periods constitutes wages within the meaning of  
27 Labor Code § 200.

28 59. Labor Code § 1198 makes it unlawful to employ a person under conditions that

1 violate the applicable Wage Order.

2 60. Section 11 of the applicable Wage Order states:

3 “No employer shall employ any person for a work period of more than five (5)  
4 hours without a meal period of not less than 30 minutes, except that when a  
5 work period of not more than six (6) hours will complete the day’s work the  
6 meal period may be waived by mutual consent of the employer and employee.  
7 Unless the employee is relieved of all duty during a 30 minute meal period, the  
8 meal period shall be considered an ‘on duty’ meal period and counted as time  
worked. An ‘on duty’ meal period shall be permitted only when the nature of  
the work prevents an employee from being relieved of all duty and when by  
written agreement between the parties an on-the-job paid meal period is agreed  
to. The written agreement shall state that the employee may, in writing, revoke  
the agreement at any time.”

9 61. At all relevant times, Plaintiff was not subject to a valid on-duty meal period  
10 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**  
11 members were not subject to valid on-duty meal period agreements with Defendants.

12 62. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
13 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**  
14 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for  
15 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

16 63. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
17 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**  
18 **Class** members when they worked five (5) hours without clocking out for any meal period.

19 64. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
20 Defendants maintained a policy or practice of deducting one-half hour for a meal period from the  
21 paychecks of **Meal Period Sub-Class** members on each day they worked, regardless of whether or  
22 not they were able to take an uninterrupted, duty-free meal period.

23 65. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
24 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**  
25 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and  
26 failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage  
27 Order.

28 66. Moreover, Defendants’ written policies do not provide that employees must take

1 their first meal period before the end of the fifth hour of work, that employees are entitled to a  
 2 second meal period if they work a shift of over ten hours, or that the second meal period must  
 3 commence before the end of the tenth hour of work, unless waived.

4 67. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**  
 5 **Class** members additional premium wages, and/or were not paid premium wages at the employees'  
 6 regular rates of pay when required meal periods were not provided.

7 68. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and  
 8 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and  
 9 costs of suit.

10 69. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial  
 11 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal**  
 12 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

### 13 **SECOND CAUSE OF ACTION**

#### 14 **FAILURE TO PROVIDE REST PERIODS**

15 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

16 **(Plaintiff and Rest Period Sub-Class)**

17 70. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

18 71. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been  
 19 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor  
 20 Code and the applicable Wage Order.

21 72. Section 12 of the applicable Wage Order imposes an affirmative obligation on  
 22 employers to permit and authorize employees to take required rest periods at a rate of no less than  
 23 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be  
 24 in the middle of each work period insofar as practicable.

25 73. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers  
 26 from requiring employees to work during required rest periods and require employers to pay non-  
 27 exempt employees an hour of premium wages at the employees' regular rates of pay, on each  
 28 workday that the employee is not provided with the required rest period(s).

74. Compensation for missed rest periods constitutes wages within the meaning of Labor Code § 200.

75. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

76. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class** with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof, as required by the applicable Wage Order.

77. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

78. Specifically, Defendants written policies do not provide that employees may take a rest period for each four hours worked, or major fraction thereof, nor that rest periods should be taken in the middle of each work period insofar as practicable.

79. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

80. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

**(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

**(Plaintiff and Hourly Employee Class)**

81. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

82. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

83. Section 2 of the applicable Wage Order defines "hours worked" as "the time during



1 which an employee is subject to the control of the employer, and includes all the time the employee  
2 is suffered or permitted to work, whether or not required to do so.”

3 84. Section 4 of the applicable Wage Order requires an employer to pay non-exempt  
4 employees at least the minimum wage set forth therein for all hours worked, which consists of all  
5 hours that an employer has actual or constructive knowledge that employees are working.

6 85. Labor Code § 1194 invalidates any agreement between an employer and an  
7 employee to work for less than the minimum or overtime wage required under the applicable Wage  
8 Order.

9 86. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages  
10 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the  
11 underlying unpaid minimum wages and interest thereon.

12 87. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than  
13 the minimum wage required under the applicable Wage Order for all hours worked during a payroll  
14 period.

15 88. Labor Code § 1197.1 provides that it is unlawful for any employer or any other  
16 person acting either individually or as an officer, agent, or employee of another person to pay an  
17 employee, or cause an employee to be paid, less than the applicable minimum wage.

18 89. Labor Code § 1198 makes it unlawful for employers to employ employees under  
19 conditions that violate the applicable Wage Order.

20 90. Labor Code § 204 requires employers to pay non-exempt employees their earned  
21 wages for the normal work period at least twice during each calendar month on days the employer  
22 designates in advance and to pay non-exempt employees their earned wages for labor performed in  
23 excess of the normal work period by no later than the next regular payday.

24 91. Labor Code § 223 makes it unlawful for employers to pay their employees lower  
25 wages than required by contract or statute while purporting to pay them legal wages.

26 92. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay  
27 non-exempt employees overtime wages of no less than one and one-half times the employees’  
28 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all

1 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the  
2 seventh consecutive day of one workweek.

3 93. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to  
4 pay non-exempt employees overtime wages of no less than two times the employees' respective  
5 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours  
6 worked in excess of eight hours on a seventh consecutive workday during the workweek.

7 94. Plaintiff is informed and believes that, at all relevant times, Defendants have applied  
8 centrally devised policies and practices to him and **Hourly Employee Class** members with respect  
9 to working conditions and compensation arrangements.

10 95. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**  
11 **Employee Class** members for all time worked, including but not limited to, overtime hours at  
12 statutory and/or agreed rates.

13 96. At all relevant times during the applicable limitations period, Defendants maintained  
14 a policy or practice of deducting one-half hour from Plaintiff's recorded hours on every workday for  
15 a meal period, regardless of whether or not Plaintiff was provided with a meal period.

16 97. Plaintiff is informed and believes that, at all relevant times during the applicable  
17 limitations period, Defendants maintained a policy or practice of deducting one-half hour from  
18 **Hourly Employee Class** members' recorded hours on every workday for a meal period, regardless  
19 of whether or not **Hourly Employee Class** members were provided with a meal period.

20 98. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time  
21 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or  
22 permitting her to work during unpaid meal periods and/or failing to properly pay Plaintiff for all  
23 overtime hours worked.

24 99. Plaintiff is informed and believes that, at all relevant times during the applicable  
25 limitations period, Defendants maintained a policy or practice of not paying hourly wages to  
26 **Hourly Employee Class** members for all time worked, including but not limited to, overtime hours  
27 at statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

28 100. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**

1 **Employee Class** members all earned wages every pay period at the correct rates, including  
2 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and  
3 **Hourly Employee Class** members to perform off-the-clock work.

4 101. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**  
5 members have suffered damages in an amount subject to proof, to the extent they were not paid the  
6 full amount of wages earned during each pay period during the applicable limitations period,  
7 including overtime wages.

8 102. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on  
9 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and  
10 overtime wages, interest thereon, and costs of suit.

11 103. The regular rate of pay under California law includes all remuneration for  
12 employment paid, on behalf of the employer, to the employee. This requirement includes but is not  
13 limited to, commissions, afternoon shift premiums, night premiums, temporary duty override,  
14 shared rewards, incentive-All About Cust, award, pay card value, premium override, non-  
15 discretionary bonuses and/or other applicable remuneration.

16 104. During the applicable limitations period, Defendants violated the rights of Plaintiff  
17 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing  
18 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194  
19 and 1198 by not correctly calculating their regular rate of pay to include all applicable  
20 remuneration, including but not limited to, commissions, afternoon shift premiums, night premiums,  
21 temporary duty override, shared rewards, incentive-All About Cust, award, pay card value,  
22 premium override, non-discretionary bonuses and/or other applicable remuneration.

23 105. California law uses the terms "compensation" and "pay" interchangeably and  
24 requires that all applicable remuneration, including but not limited to, commissions, afternoon shift  
25 premiums, night premiums, temporary duty override, shared rewards, incentive-All About Cust,  
26 award, pay card value, premium override, non-discretionary bonuses and/or other applicable  
27 remuneration, be included when calculating an employee's regular rate of pay.

28 106. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of

1 compensation that did not reflect, among other things, commissions, afternoon shift premiums,  
 2 night premiums, temporary duty override, shared rewards, incentive-All About Cust, award, pay  
 3 card value, premium override, non-discretionary bonuses and/or other applicable remuneration as  
 4 required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions  
 5 when Defendants paid him premium wages in lieu of meal and/or rest periods.

6 107. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times  
 7 during the applicable limitations period, Defendants maintained a policy or practice of paying  
 8 **Hourly Employee Class** members premium wages based on rates of compensation that have not  
 9 reflected commissions, afternoon shift premiums, night premiums, temporary duty override, shared  
 10 rewards, incentive-All About Cust, award, pay card value, premium override, non-discretionary  
 11 bonuses and/or other applicable remuneration as required by Labor Code § 226.7(b) and §§ 11 and  
 12 12 of the applicable Wage Order on the occasions when Defendants paid them premium wages in  
 13 lieu of meal and/or rest periods.

14 108. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial  
 15 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Hourly**  
 16 **Employee Class** members, seeks to recover reasonable attorneys' fees.

#### 17 **FOURTH CAUSE OF ACTION**

#### 18 **FAILURE TO INDEMNIFY**

19 **(Lab. Code § 2802)**

20 **(Plaintiff and Expense Reimbursement Class)**

21 109. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

22 110. Labor Code section 2802(a) states:

23 An employer shall indemnify his or her employee for all necessary expenditures or  
 24 losses incurred by the employee in direct consequence of the discharge of his or her  
 25 duties, or of his or her obedience to the directions of the employer, even though  
 unlawful, unless the employee, at the time of obeying the directions, believed them to  
 be unlawful.

26 111. At all relevant times during the applicable limitations period, Plaintiff and the  
 27 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,  
 28 including but not limited to, personal cell phone expenses and personal protective equipment,

1 including steel toed boots, safety vests, marshaling wands, knee pads, earmuffs, and gloves that  
2 were part of their uniform.

3 112. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid  
4 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the  
5 discharge of their duties.

6 113. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid  
7 by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all  
8 necessary business expenses incurred in the discharge of their duties.

9 114. At all relevant times during the applicable limitations period, Defendants required  
10 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused  
11 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**  
12 **Reimbursement Class** members for all such expenditures.

13 115. At all relevant times during the applicable limitations period, Defendants required  
14 Plaintiff and **Expense Reimbursement Class** members to purchase and maintain personal  
15 protective equipment and/or uniforms and apparel unique to Defendants at Plaintiff's and **Expense**  
16 **Reimbursement Class** members' expense. Defendants failed to indemnify Plaintiff and **Expense**  
17 **Reimbursement Class** members for all such expenditures.

18 116. At all relevant times during the applicable limitations period, Defendants required  
19 Plaintiff and **Expense Reimbursement Class** members to pay for expenses as a result of the use of  
20 their personal cell phones for work purposes for the benefit of Defendants and at Plaintiff's and  
21 **Expense Reimbursement Class** members' expense. Defendants failed to indemnify Plaintiff and  
22 **Expense Reimbursement Class** members for all such expenditures.

23 117. Plaintiff is informed and believes that, during the applicable limitations period,  
24 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**  
25 **Reimbursement Class** members for all necessary business expenses.

26 118. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to  
27 restitution for all unpaid amounts due and owing within four years of the date of the filing of the  
28 original Complaint and until the date of entry of judgment.

119. Plaintiff, on behalf of himself , and **Expense Reimbursement Class** members, seeks interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys’ fees pursuant to Code of Civil Procedure § 1021.5.

#### **FIFTH CAUSE OF ACTION**

#### **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

#### **(Lab. Code § 226)**

#### **(Plaintiff and Wage Statement Penalties Sub-Class)**

120. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

121. Labor Code § 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

122. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the “detachable part of the check” provision and the “accurate itemized statement in writing” provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion

1 Letter July 6, 2006.) Defendants provided Plaintiff and putative class members with electronic wage  
2 statements. But as the Division of Labor Standards Enforcement has advised employers, this is only  
3 permissible if the employer gives the employees the ability to elect to receive paper wage  
4 statements, which Defendants did not do.

5 123. Plaintiff is informed and believes that, at all relevant times during the applicable  
6 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**  
7 members with written wage statements as described above.

8 124. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**  
9 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in  
10 that Defendants had the ability to provide them with accurate wage statements but had intentionally  
11 provided them with written wage statements that Defendants knew do not comply with Labor Code  
12 § 226(a).

13 125. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,  
14 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'  
15 legal rights to receive accurate wage statements and have misled them about their actual rates of pay  
16 and wages earned. In addition, inaccurate information on their wage statements have prevented  
17 immediate challenges to Defendants' unlawful pay practices, has required discovery and  
18 mathematical computations to determine the amount of wages owed, has caused difficulty and  
19 expense in attempting to reconstruct time and pay records, and/or has led to the submission of  
20 inaccurate information about wages and deductions to federal and state government agencies.

21 126. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage**  
22 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars  
23 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and  
24 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §  
25 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class  
26 member.

27 127. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or  
28 the common fund doctrine, Plaintiff, on behalf of himself and **Wage Statement Penalties Sub-**



1 **Class** members, seek awards of reasonable attorneys' fees and costs.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

4 **(Lab. Code §§ 201–203)**

5 **(Plaintiff and Waiting Time Penalties Sub-Class)**

6 128. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

7 129. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members  
8 have been entitled, upon the end of their employment with Defendants, to timely payment of all  
9 wages earned and unpaid before termination or resignation.

10 130. At all relevant times, pursuant to Labor Code § 201, employees who have been  
11 discharged have been entitled to payment of all final wages immediately upon termination.

12 131. At all relevant times, pursuant to Labor Code § 202, employees who have resigned  
13 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of  
14 all final wages at the time of resignation.

15 132. At all relevant times, pursuant to Labor Code § 202, employees who have resigned  
16 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of  
17 all final wages within seventy-two (72) hours' of giving notice of resignation.

18 133. During the applicable limitations period, Defendants failed to pay Plaintiff all of his  
19 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

20 134. Plaintiff is informed and believes that, at all relevant times during the applicable  
21 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**  
22 members all of their final wages in accordance with the Labor Code.

23 135. Plaintiff is informed and believes that, at all relevant times during the applicable  
24 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**  
25 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code  
26 §§ 201 or 202 by failing to timely pay them all final wages.

27 136. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to  
28 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been



1 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201  
 2 and/or 202 but have intentionally adopted policies or practices that are incompatible with those  
 3 requirements.

4 137. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of himself and  
 5 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective  
 6 dates that their final wages had first become due until paid, up to a maximum of thirty days, and  
 7 interest thereon.

8 138. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial  
 9 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time**  
 10 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

# SEVENTH CAUSE OF ACTION

## **FAILURE TO PAY ALL EARNED VACATION TIME**

13 **(Lab. Code §§ 201, 203, 227.3)**

14 **(Plaintiff and Vacation Time Sub-Class)**

15 139. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 140. At all relevant times, Plaintiff and **Vacation Time Sub-Class** members have been  
 17 entitled, upon the end of their employment with Defendants, to payment of all vested vacation time.

18 141. Vacation pay is considered a form of wages under Labor Code section 200. Pursuant  
 19 to the California Supreme Court's decision in *Suastez v. Plastic Dress Up Co.*, 31 Cal. 3d 774  
 20 (1982) and Labor Code section 227.3, vested vacation pay and other similar forms of paid time off  
 21 earned based on labor performed are considered wages that cannot be subject to forfeiture without  
 22 compensation for forfeited days at the applicable rates required by law.

23 142. Labor Code section 227.3 states, in relevant part: "Unless otherwise provided by a  
 24 collective-bargaining agreement, whenever a contract of employment or employer policy provides  
 25 for paid vacations, and an employee is terminated without having taken off his vested vacation time,  
 26 all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of  
 27 employment or employer policy respecting eligibility or time served; provided, however, that an  
 28 employment contract or employer policy shall not provide for forfeiture of vested vacation time

1 upon termination. The Labor Commissioner or a designated representative, in the resolution of any  
 2 dispute with regard to vested vacation time shall apply the principles of equity and fairness.”

3 143. At all relevant times during the applicable limitations period, Defendants maintained  
 4 a policy or practice that provided for the unlawful forfeiture of vested vacation pay in violation of  
 5 *Suastez* and Labor Code section 227.3.

6 144. Pursuant to Labor Code §§ 201 and 227.3, Plaintiff, on behalf of himself and  
 7 **Vacation Time Sub-Class** members, seeks all unpaid wages for earned vacation time, interest  
 8 thereon.

9 145. Pursuant to Labor Code § 218.5, Plaintiff, on behalf of himself and **Vacation Time**  
 10 **Sub-Class** members, seeks to recover reasonable attorneys’ fees and costs.

# 11 **SEVENTH CAUSE OF ACTION**

## 12 **UNFAIR COMPETITION**

13 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

14 **(Plaintiff and UCL Class)**

15 146. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 147. Business and Professions Code § 17200 defines “unfair competition” to include any  
 17 unlawful business practice.

18 148. Business and Professions Code §§ 17203–17204 allow a person who has lost money  
 19 or property as a result of unfair competition to bring a class action in accordance with Federal Rules  
 20 of Civil Procedure 23 to recover money or property that may have been acquired from similarly  
 21 situated persons by means of unfair competition.

22 149. California law requires employers to pay hourly, non-exempt employees for all hours  
 23 they are permitted or suffered to work, including hours that the employer knows or reasonably  
 24 should know that employees have worked.

25 150. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and  
 26 incorporates the FIRST, SECOND, and THIRD causes of action herein.

27 151. Plaintiff lost money and/or property as a result of the aforementioned unfair  
 28 competition.

1           152. Defendants have or may have acquired money by means of unfair competition.

2           153. Plaintiff is informed and believes and thereupon alleges that, by committing the  
3 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,  
4 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by  
5 violating the Labor Code as alleged herein.

6           154. Defendants have committed criminal conduct through their policies and practices of,  
7 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-  
8 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each  
9 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,  
10 and by failing to reimburse them for all expenses.

11           155. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt  
12 employees and entitled to the full protections of both the Labor Code and the applicable Wage  
13 Order.

14           156. Defendants' unlawful conduct as alleged in this Complaint amounts to and  
15 constitutes unfair competition within the meaning of Business and Professions Code section 17200  
16 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition  
17 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of  
18 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of himself and on  
19 behalf of similarly situated persons in a class-action proceeding.

20           157. As a result of Defendants' violations of the Labor Code during the applicable  
21 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form  
22 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'  
23 conduct.

24           158. Plaintiff is informed and believes that other similarly situated persons have been  
25 subject to the same unlawful policies or practices of Defendants.

26           159. Due to the unfair and unlawful business practices in violation of the Labor Code,  
27 Defendants have gained a competitive advantage over other comparable companies doing business  
28 in the State of California that comply with their legal obligations.

1 160. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive  
 2 relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act  
 3 that violates, or is considered unlawful under, any other state or federal law.

4 161. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,  
 5 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining  
 6 Defendants, and each of them, and their agents and employees, from further violations of the Labor  
 7 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an  
 8 order permanently enjoining Defendants, and each of them, and their respective agents and  
 9 employees, from further violations of the Labor Code and applicable Industrial Welfare  
 10 Commission Wage Orders.

11 162. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself  
 12 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging  
 13 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair  
 14 business practices.

15 163. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or  
 16 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable  
 17 attorneys’ fees in connection with their unfair competition claims.

## 18 **EIGHTH CAUSE OF ACTION**

### 19 **CIVIL PENALTIES**

#### 20 **(Lab. Code §§ 2698 *et seq.*)**

21 164. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

22 165. During the applicable limitations period, Defendants have violated Labor Code §§  
 23 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 246, 510, 512, 1194, 1197, 1198, and 2802.

24 166. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of  
 25 himself and other current and former employees, to bring a representative civil action to recover  
 26 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,  
 27 be brought or maintained as a class action pursuant to Federal Rules of Civil Procedure 23.

28 167. Plaintiff, a former employee against whom Defendants committed one or more of the

1 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee  
2 within the meaning of Labor Code § 2699(c).

3 168. Plaintiff has complied with the procedures for bringing suit specified in Labor Code  
4 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency  
5 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an  
6 intent to investigate.

7 169. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil  
8 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,  
9 227.3, 246, 510, 512, 1194, 1197, 1198 and 2802:

- 10 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 246, 1194,  
11 1198 and 2802, one hundred dollars (\$100) for each employee per pay period  
12 for each initial violation and two hundred dollars (\$200) for each employee  
13 per pay period for each subsequent violation (penalties set by Labor Code §  
14 2699(f)(2));
- 15 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding  
16 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 17 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each  
18 employee for each initial violation that was neither willful nor intentional,  
19 two hundred dollars (\$200) for each employee, plus 25% of the amount  
20 unlawfully withheld from each employee, for each initial violation that was  
21 either willful or intentional, and two hundred dollars (\$200) for each  
22 employee, plus twenty-five percent (25%) of the amount unlawfully withheld  
23 from each employee, for each subsequent violation, regardless of whether the  
24 subsequent violation was either willful or intentional (penalties set by Labor  
25 Code § 210);
- 26 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each  
27 employee for each initial violation that was neither willful nor intentional,  
28 two hundred dollars (\$200) for each employee, plus twenty-five percent

(25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: November 25, 2024

SETAREH LAW GROUP

/s/ Shaun Setareh

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MARVIN TOLEDO